IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1559/2006
(Ananat Mishra & Anr. Vs. State of Rajasthan)

Date of Order : 05/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. C.P.Soni for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

Reportable

Issue notice for final disposal. Public prosecutor accepted the notice. With the consent of learned counsel for the parties, the matter is finally heard and decided at the admission stage.

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 29.4.2005 passed by Additional Sessions Judge No.1, Jodhpur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 16.10.2004 passed by Judicial Magistrate, Jodhpur (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the parties.

Carefully gone through the orders passed by both the courts below.

A complaint was filed by the petitioners before the trial court on 23.6.1999 for the offences under Sections 420, 406, 467, 468, 471 and 120-B IPC. The said complaint was sent to the police for investigation under Section 156 (3) Cr.P.C. The police after investigation filed a negative final report on the ground that the matter is of civil nature. A notice of the final report was served on the petitioners. The petitioners appeared before the trial court and filed protest petition, however, did not produce any evidence and as such the statement of complainants under Section 200 Cr.P.C. and their witnesses under Section 202 Cr.P.C. were not recorded as the complainant failed to produce any evidence. The trial court by order dated 16.10.2004 accepted the negative final report and dismissed the protest petition. On a revision, the revisional court did not find any error in the order of the trial court and as such the revision petition was dismissed. Hence this petition.

On perusal of the orders impugned, it appears that the negative final report was accepted by the trial court while dismissing the protest petition on two grounds; firstly that the complainant-petitioners neither made statement under Section 200 Cr.P.C. nor produced any evidence under Section 202 Cr.P.C. and the documents of which the allegation of forgery and

using it as genuine, has already been filed by the parties in a civil suit pending in the Court of District Judge, Jodhpur for partition, declaration and cancellation of sale deed and permanent injunction and therefore, the cognizance is barred under Section 195 Cr.P.C. On perusal of the orders passed by the trial court and the revisional court, it appears that the courts below have not considered the statement of witnesses recorded by the police under Section 161 Cr.P.C. Mainly the courts below declined to take cognizance on the ground that the matter is of civil nature and alleged documents have been filed in the civil court.

It is contended by learned counsel for the petitioners that forging of document is prior in time then filing of the same in the Court. It is not the case that the documents which were in the custody of the Court have been forged. The documents were forged prior to filing in the Court and thereafter they were filed in the suit and therefore, bar under Section 195 (1)(b) (ii) Cr.P.C. is not attracted. Learned counsel has relied on a Constitution Bench decision of Hon'ble Supreme Court in Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another AIR 2005 SC 2119 where the Apex Court held as under :-

> "Broadly, S.195 Cr.P.C. deals with three distinct categories of offences which have been described in cls. (a), (b) (i) and (b) (ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences

relating to documents given in evidence. Cl. (a) deals with offences punishable under Ss. 172 to 188 IPC which occur in Chap.X of the IPC and the heading of the Chapter is- 'Of Contempts of the Lawful Authority of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Cl. (b) (i) refers to offences in Chap. XI of IPC which is headed as – 'Of False Evidence and Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct co-relation with the proceedings in a Court of Justice (Ss. 205 and 211 IPC). This being the scheme of two provisions or clauses of S. 195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in cl. (b) (ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with cls. (a) (i) and (b) (i) and consequently with the scheme of S. 195 Cr.P.C. This indicates that cl. (b) (ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court.

Learned counsel for the petitioners has also relied on a decision of Hon'ble Supreme Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors. 2005 (1) Apex Court

Judgments, 103 (S.C.) wherein Hon'ble Supreme Court held upon receipt of a police report under Section 173 (2), a Magistrate is entitled to take cognizance of an offence under Section 190 (1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190 (1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit exercise of his power under Section 190 (1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190 (1)(a) though it is open to him to act under Section 200 or Section 202 also.

A Magistrate can take cognizance under Section 190 (1)(b) even if police report is that no case is made out against the accused. It is not necessary that in every case where the

police files negative final report that the Magistrate is to insist upon the complainant to make statement under Section 200 Cr.P.C. and produce witness under Section 202 Cr.P.C. What the Magistrate required is to peruse the police papers and if from the police papers, offence is made out, then the Court is not obliged to accept the conclusion arrived at by the police.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

It is settled law that even where civil consequences are involved and from the material on record, the criminal

offence is made out, then the criminal proceeding as well as the civil proceeding can go simultenously.

In Alpic Finance Ltd. Vs. P. Sadasivan & Anr., (2001) 3 SCC 513, the Hon'ble Supreme Court held that merely because remedy by way of civil suit is available, is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of the offence alleged. The Apex Court further observed that in transaction involving passing of valuable properties between the parties, the aggrieved party may sue for damages and also file a complaint against the wrongdoer for criminal breach of trust or cheating, but the complaint must disclose essential ingredients of the offence.

In M. Krishnan Vs. Vijay Singh & Anr., (2001) 8 SCC 645, the Hon'ble Supreme Court observed that mere pendency of the civil suit between the parties cannot be a ground for quashing the criminal proceedings against the accused. The Apex Court observed that if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings and such a course cannot be the mandate of law. The Apex Court further held that in a criminal court, the

allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. The Apex Court further held as under:-

> "Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. The revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report do not prima facie disclose the commission of an offence or the allegations are so absurd or inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

Keeping in view the decisions of Hon'ble Supreme Court in Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another (supra), Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors. (supra), Alpic Finance Ltd. Vs. P. Sadasivan & Anr. (supra), M. Krishnan Vs. Vijay Singh & Anr. (supra) and Jagdish Ram Vs. State of Rajasthan (supra), in my view, the trial court fell in error in accepting the final report and dismissing the

protest petition on the ground of bar of Section 195 (1)(b)(ii) Cr.P.C. and therefore, the order passed by the trial court as also by the revisional court cannot be sustained and are liable to be set aside and the matter deserves to be remanded to the trial court to decide it afresh.

Consequently, the criminal misc. petition is allowed. The order impugned dated 16.10.2004 passed by the trial court and the order dated 29.4.2005 passed by the revisional court are set aside and the matter is remanded to the trial court to consider the material placed before it afresh and pass afresh order in accordance with law. The parties to appear before the trial court on 8.1.2007.

(H.R.PANWAR),J.

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